IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.106 of 2004
DATE OF DECISION: 14.9.2006
***

Gurcharan Singh

..PETITIONER

VS.

Presiding Officer, Labour Court and others.

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Mr. Vipin Mahajan, Advocate**
for the petitioner.

Ms. Nirmaljit Kaur, Addl. A.G. Punjab with
Ms. Sonia K. Aggarwal, AAG Punjab
for respondent Nos. 2 and 3.
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ARVIND KUMAR, J.

The challenge in this writ petition is to be order dated 16.9.2003 passed by respondent No.1, whereby the ex-parte award dated 16.7.1996 passed in favour of the petitioner has been set-aside..

The facts necessary for the disposal of the instant writ petition are that the petitioner-workman, raised an industrial dispute, challenging his termination by way of filing a demand notice on 20.12.1994. The appropriate Government vide notification dated 30.10.1995 referred the dispute to the Labour Court for adjudication. The Labour Court issued notices to the parties. The petitioner-workman appeared and filed his claim statement. Since there was no representation for and on behalf of the respondent Nos.2 after due service, he was proceeded ex-parte on 26.3.1996. Similarly, the notice sent through registered post to respondent No.3 was not received back despite lapse of one month, presuming him as deemed to be served, he was also proceeded ex-parte on 28.5.1996 by the Labour Court. The ex-parte evidence

was led by the petitioner-workman. On conclusion of proceedings, the Labour Court vide award dated16.7.1996, answered the reference in favour of the workman and ordered his re-instatement with continuity of service and full back wages. The said award was published in the official gazette on 18.10.1996

It appears that thereafter the petitioner-workman approached the Labour-cum-Conciliation Officer, Gurdaspur for implementation of the said award dated 16.7.1996. The notice was issued to the respondents-department in the month of March 1997 and in response thereto they appeared before the Labour-cum-Conciliation Officer, Gurdaspur. Thereafter, on 16.9.1997 the respondents-department filed an application before the Labour Court for setting aside the ex-parte award dated 16.7.1996. Mainly it was their case that the summons were sent on the wrong addresses, as such, service thereof was never affected upon them. It was also pleaded that they filed a Civil Writ Petition No.5265 of 1997, which was lateron withdrawn and after taking sanction from the Government, they filed the application for setting aside of award dated 16.7.1996. That application was contested by the petitioner-workman by filing a reply thereto. His stand was that the department was fully aware of the proceedings pending before the Labour Court and they deliberately skipped therefrom. The application is time barred. Upon the pleadings, the Labour Court framed the issues. Both the parties led their respective evidence. On conclusion of proceedings, the Labour Court vide the impugned order dated 16.9.2003 set aside the ex-parte award dated 16.7.1996 subject to payment of costs of Rs.600/-.

Feeling dissatisfied with the same, the petitioner-workman has preferred the instant petition.

We have heard learned counsel for the parties and have gone through the paper-book carefully.

At the very outset we refrain ourselves from touching the merits of the impugned order. The only question which arises for determination in this petition is whether the Labour Court was well within its jurisdiction to entertain the application for setting aside the ex-parte award after a lapse of period of more than 30 days and that too after its due publication in the Government gazette.

Section 17 of the Industrial Disputes Act, 1947 (for short the Act) envisages publication of award in the Official Gazette which becomes enforceable under Section 17-A of the Act on the expiry of 30 days from the date of its publication. Till that stage is not reached, the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to that stage, it has power to entertain such an application in connection with the dispute. But once the award is published in the Official Gazette, it becomes enforceable under Section 17-A of the Act on the expiry of 30 days from the date of its publication, in that eventuality, the Labour Court or the Tribunal, as the case may be, left with no power to entertain any application for setting aside the award, as it becomes functus officio. The Hon'ble Supreme Court in **Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and others, 1980 Supp. SCC 420** has held that where an application is filed to set aside an ex parte award within 30 days of the publication of the award, the Tribunal under the Industrial Disputes Act, 1947 does not become functus officio. This view was reiterated in **Satnam Verma Vs. Union of India, AIR 1985 SC 294.** The Grindlays Bank's case and Satnam Verma's case (supra) were also considered by the Supreme Court in the case re; **Sangham Tape Company Vs. Hans Raj 2005(1) RSJ 322,** wherein the Labour Court had set aside the ex-parte award

after a period of 30 days of its publication in the official gazette, the High Court, in a writ petition, set aside the order of the Labour Court, the Hon'ble Supreme Court up-held the view taken by the High Court and observed that such jurisdiction can be exercised within a limited time frame i.e. 30 days from the date of publication of award. Once the award having become enforceable, the Labour Court would become functus officio.

In the instant case, admittedly the ex-parte award was passed on 16.7.1996, which was published in the Official Gazette on 18.10.1996. The application for setting aside the aforesaid ex-parte award was moved by the department on 16.9.1997. Therefore, in view of the dicta of the Hon'ble Supreme Court in Sangham's case (supra) we are of the considered view that it was not within the domain of the Labour Court to entertain such an application for setting aside the ex-parte award dated 16.7.1996. The Labour Court has grossly erred in setting aside the afore-stated ex-parte award without taking note of the fact that after the expiry of period of 30 days of its due publication, the award has become enforceable, it was not within the ambit of its jurisdiction to do so.

Accordingly, the instant petition is allowed. The impugned order dated 16.9.2003, passed by the Labour Court, is quashed. The application of the respondent-department is dismissed.

(ARVIND KUMAR)
JUDGE

September 14,2006 **(J.S. NARANG)**
Jiten **JUDGE**